

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED BY gj D.C.
APR 20 PM 4:12

CASE NO. - 01

SANDY MASCIATTI, MARJORIE MONDESIR,
and KRIS POWELL, on behalf of themselves
and others similarly situated,

Plaintiff,

MAGISTRATE JUDGE
BROWN

vs.

WASHINGTON MUTUAL BANK, a Foreign
corporation,

Defendant.

COMPLAINT

COME NOW the Plaintiffs, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, on behalf of themselves and all others similarly situated, by and through their undersigned counsel, and sue the Defendant, WASHINGTON MUTUAL BANK, a Foreign corporation, and as grounds therefor states as follows:

1. The Plaintiffs, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, are former employees of Defendant, WASHINGTON MUTUAL BANK, and they bring this action on behalf of themselves and other current and former employees of the Defendant, WASHINGTON MUTUAL BANK, similarly situated to them, for compensation and other relief under the Fair Labor Standards Act, as amended (the "Act"), 29 U.S.C. §201, et seq.

2. Plaintiff, SANDY MASCIATTI, is a citizen and resident of Broward County, Florida, within the jurisdiction of this Court.

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3. Plaintiff, MARJORIE MONDESIR, is a citizen and resident of Miami-Dade County, Florida, within the jurisdiction of this Court.

4. Plaintiff, KRIS POWELL, is a citizen and resident of Miami-Dade County, Florida, within the jurisdiction of this Court.

5. Defendant, WASHINGTON MUTUAL BANK, is a Foreign corporation, with offices in Broward and Miami-Dade County Florida, within the Southern District of Florida.

6. While employed by Defendant, WASHINGTON MUTUAL BANK, Plaintiffs were paid on an hourly basis, but were not paid overtime for hours actually worked in excess of 40 because their supervisor changed their time records or, alternatively, ordered them not to place accurate times on their time records in order to prevent them from showing overtime on their time sheets. Upon information and belief, this was done pursuant to a company scheme or device to evade the maximum hour protections of the Fair Labor Standards Act.

7. Jurisdiction is conferred on this Court by 28 U.S.C. §1337 and by 29 U.S.C. §216(b). At all times pertinent to this Complaint, Defendant, WASHINGTON MUTUAL BANK, regularly operated a business engaged in the savings and loan industry. The annual gross revenue of Defendant, WASHINGTON MUTUAL BANK, was in excess of \$500,000.00 per annum.

8. By reason of the foregoing, Defendant, WASHINGTON MUTUAL BANK, was, during all times hereafter mentioned, an enterprise engaged in commerce or in the

production of goods for commerce as defined in §§3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and §203(s). In addition, Defendant utilized goods in commerce, engaged in commerce, and had its workers, including Plaintiffs, engage in commerce or utilize goods in commerce as part of their employment.

9. The additional persons who may become Plaintiffs in this action are employees who have been paid on an hourly basis, but whose time records have been altered or, alternatively, who were forced to place false times on their time records in order for the Defendant, WASHINGTON MUTUAL BANK, to evade the maximum hour protections of the Fair Labor Standards Act, and thus were subject to the same payroll practices and procedures described above.

10. At all times pertinent to this Complaint, Defendant, WASHINGTON MUTUAL BANK, failed to comply with 29 U.S.C. §201-19 in that Plaintiffs and those similarly situated to Plaintiffs performed services for Defendant for which no provision was made by Defendant to properly pay Plaintiffs for those hours.

11. By reason of Plaintiffs' employment with Defendant, WASHINGTON MUTUAL BANK, they were employed by an enterprise engaged in commerce within the meaning of 29 U.S.C. §§206(a) and 207(a). Further, Plaintiffs themselves were engaged in interstate commerce. The work performed by Plaintiffs was directly essential to the business operations of Defendant which were directly essential to the business performed by Defendant.

12. The records reflecting hours worked by Plaintiffs and all other similarly situated employees and the compensation actually paid to such employees are in the possession and custody and control of Defendant and Plaintiffs are unable to state at this time the exact amount due and owing them or each similarly situated employee. Plaintiffs propose to obtain such information by appropriate discovery proceedings to be taken promptly in this case and, if necessary, Plaintiffs will then seek leave to amend their Complaint to set forth the precise amount due them.

13. Plaintiffs, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, are entitled to be paid the time and a half of their average hourly wage for each hour in each work week in which they worked more than forty (40) hours. All similarly situated employees are similarly owed their overtime payments for each overtime hour they worked and were not properly paid.

14. By reason of the said intentional, willful and unlawful conduct of Defendant, WASHINGTON MUTUAL BANK, Plaintiffs have suffered damages, incurred costs and are also entitled to receive reasonable attorneys' fees.

15. As a result of Defendant's willful violation of the Act, Plaintiffs are entitled to liquidated damages in an amount equal to their actual damages. Moreover, since the failure to pay overtime was part of a corporate-wide scheme and device, this Court should impose a three-year statute of limitations upon Defendant because of the wilful nature of this misconduct.

WHEREFORE, Plaintiff, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, and those similarly situated to them, who have or will opt into this action, demand judgment against Defendant, WASHINGTON MUTUAL BANK, for the overtime payments due them for the hours worked by them for which they have not been properly compensated, liquidated damages, prejudgment interest, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper, including prejudgment interest.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE BY RIGHT.

Dated this 20th day of April, 2000.

Respectfully submitted,

Phillips, Eisinger, Koss, Rothstein
& Rosenfeldt, P.A.
Attorneys for Plaintiffs
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Hollywood, Florida 33021
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Fax: 954/894-8015

By: 

Stuart A. Rosenfeldt
FBN: 316113

CIVIL COVER SHEET - 01

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SANDY MASCIATTI, MARJORIE MONDESIR, and KRIS POWELL, on behalf of themselves and others similarly situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

A: Dade / 1:00cv1427 / Davis Brown

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)

Stuart A. Rosenfeldt, Esq., Phillips, Eisinger, Koss, Rothstein & Rosenfeldt, P.A., 4000

Hollywood Blvd., Ste. 265-S, Hollywood, Fla. 33021-Tele: 954/894-8000

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, KROWA, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

DEFENDANTS

WASHINGTON MUTUAL BANK, a Foreign corporation
MAGISTRATE JUDGE BROWN

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Miami-Dade

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

PTF DEF

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to Dist Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other: Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> B 610 Agriculture <input type="checkbox"/> B 620 Other Food & Drug <input type="checkbox"/> B 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> B 630 Liquor Laws <input type="checkbox"/> B 640 R.R. & Truck <input type="checkbox"/> B 650 Airline Regs <input type="checkbox"/> B 660 Occupational Safety/Health <input type="checkbox"/> B 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> A 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> A 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions A OR B
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other: Civil Rights PRISONER PETITIONS <input type="checkbox"/> B 510 Motions to Vacate Sentence <input type="checkbox"/> B 530 General <input type="checkbox"/> A 535 Death Penalty <input type="checkbox"/> B 540 Mandamus & Other <input type="checkbox"/> B 550 Civil Rights <input type="checkbox"/> B 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> A 791 Empl. Ret. Inc. Security Act		

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

29 U.S.C. Section 216B

LENGTH OF TRIAL

var 8 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$
Over \$50,000.00

CHECK YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

04/20/00

SIGNATURE OF ATTORNEY OF RECORD

Stuart A. Rosenfeldt, Esq., Counsel for Plaintiff

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

\$150.00 820741

04/20/00